Roswil, Inc. d/b/a Ramey Supermarkets *and* United Food and Commercial Workers Union Local 322 affiliated with United Food and Commercial Workers International Union, AFL–CIO, CLC

Congress of Independent Unions *and* Marcella (Marsha) S. Webber. Cases 17–CA–17204–2 and 17–CB–4545

June 5, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On February 15, 1995, Administrative Law Judge Richard J. Linton issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondents each filed cross-exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Roswil, Inc. d/b/a Ramey Supermarkets, Aurora, Missouri, its officers, agents, successors, and assigns, and the Respondent, Congress of Independent Unions, Alton, Illinois, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraphs A,2(a) and (b).

''(a) Within 14 days after service by the Region, post at its store in Aurora, Missouri, copies of the attached notice marked 'Appendix A.'[5] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by Respondent Ramey's authorized representative, shall be posted by Respondent Ramey and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Ramey to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent Ramey has gone out of business or closed the facility involved in these proceedings, Respondent Ramey shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent Ramey at any time since February 16, 1994.

''(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Ramey has taken to comply.''

2. Substitute the following for paragraphs B,2(a) and (b).

''(a) Within 14 days after service by the Region, post on its union bulletin board at Ramey's Aurora, Missouri store copies of the attached notice marked 'Appendix B.'[6] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by Respondent CIU's authorized representative, shall be posted by Respondent CIU and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent CIU to ensure that the notices are not altered, defaced, or covered by any other material.

''(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent CIU has taken to comply.''

Constance N. Traylor, Esq., for the General Counsel.
Donald W. Jones, Esq. (Hulston, Jones, Gammon & Marsh), of Springfield, Missouri, for Respondent Ramey Supermarkets.
Robert G. Raleigh, Esq. (Hoagland, Fitzgerald, Smith & Pranaitis), of Alton, Illinois, for Respondent CIU.

[1] We find no merit in the Respondents' allegations of bias and prejudice on the part of the judge. Thus, we perceive no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated bias against the Respondents in his analysis or discussion of the evidence. Similarly, there is no basis for finding that bias and prejudice exist merely because the judge resolved important factual conflicts in favor of the General Counsel's witnesses. *NLRB v. Pittsburgh Steamship Co.*, 337 U.S. 656, 659 (1949).

[2] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In sec. F,2 of his decision the judge describes part of an alleged threat by Respondent Ramey's president, Richard Taylor, as stating that ''with customers there would be no jobs.'' We correct the statement to read that ''without customers there would be no jobs.''

[3] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. In this case I find that Ramey Supermarkets coercively interrogated its employees and that the Congress of Independent Unions (CIU) (whose collective-bargaining agreement with Ramey Supermarkets contains a union-security clause) unlawfully told employees that they had to sign CIU membership cards in order to get their paychecks at Ramey's. (I dismiss all other allegations.) I order both Ramey Supermarkets and the CIU to cease and to desist and to post appropriate notices.

I presided at this 6-day trial in Springfield, Missouri, opening September 27, 1994, and closing November 2, 1994, pursuant to the June 13, 1994 order consolidating cases, consolidated complaint and notice of hearing (complaint) issued by the General Counsel of the National Labor Relations Board through the Regional Director for Region 17.[1] The complaint is based on a charge filed February 16, 1994, in Case 17–CA–172042 by United Food and Commercial Workers Union Local 322, affiliated with United Food and Commercial Workers International Union, AFL–CIO, CLC (the Union or Local 322), against Respondent Ramey, and on a charge filed March 17 in Case 17–CB–4545 by Marcella (Marsha) S. Webber (Webber) against CIU. The original charges, served the same date they were filed, were later amended. As the complaint reflects, on March 14 the CIU filed a charge in Case 17–CA–17269 against Respondent Ramey. The parties settled that case, and at the beginning of the hearing, and on motion, I severed Case 17–CA–17269 from the proceeding. (1:10, 20, 32, 35.)[2]

Chronologically, the alleged unfair labor practices begin in August 1993. By trial amendment granted over Ramey's limitations objection (1:57–64), the General Counsel alleges (complaint par. 5(f)) that, since August 16, 1993, Ramey, by Controller Tom Gordon, Aurora Store Manager Terry Bagby, and other members of management, has ''maintained and enforced a policy requiring that employees [at the Aurora, Missouri store] execute membership cards seeking membership in the CIU in order to continue working for Respondent Ramey and in order to receive paychecks.'' By such action Ramey allegedly violated Section 8(a)(1) and (2) of the Act.

Complaint paragraph 6 alleges that the CIU violated Section 8(b)(1)(A) of the Act about November 1, 1993, when its agent, Steward Janet Browning, informed employees at Ramey's Aurora, Missouri store that they could not be paid by Ramey unless they signed CIU membership cards.

About early December 1993, complaint paragraph 5(e) alleges, Ramey violated Section 8(a)(1) and (2) of the Act when alleged Supervisor Toni Andrus informed employees that they could not receive paychecks or continue to work for Ramey unless they signed CIU membership cards.

The General Counsel also alleges that Respondent Ramey violated Section 8(a)(1) of the Act about February 9 or 10 when its chairman, Richard Taylor, threatened employees at Ramey's Aurora, Missouri store with certain economic penalties (complaint par. 5(a)) and instructed employees to try to convince other employees not to support UFCW Local 322 (par. 5(b)); about mid-February when alleged Supervisors Michael Beall and Mark Rinker interrogated employees about their support of Local 322 (par. 5(c)); and about February 9 or 10 when Aurora Store Manager Terry Bagby impliedly promised employees increased benefits to dissuade them from supporting the Union (the ''impliedly'' was added by trial amendment, 1:65).

By their answers to the complaint, Ramey and the CIU admit certain basic allegations, but deny violating the Act. Ramey also denies the supervisory and agency status of Toni Andrus and Mike Beall. Additionally, Ramey alleges certain matters as affirmative defenses.

The pleadings establish that, since November 21, 1980, the CIU has been the certified and exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit:

> All employees employed by Ramey Supermarkets at its Aurora, Missouri store, excluding the Store Manager, Assistant Store Managers, Produce Managers, Bakery Managers, Deli Managers, Video Managers, Butchers, Butcher helpers, personnel of leased departments, other supervisors within the meaning of the Act, professional employees, guards, salesmen, accounting personnel, industrial relations employees, confidential employees, and office clerical employees.

Ramey recognizes the CIU as the exclusive bargaining representative of the employees in the foregoing unit as evidenced by a collective-bargaining agreement effective by its terms from February 1, 1993, through January 31, 1996. (GCX 2 at 1, 11.) The unit and recognitional paragraphs are chiefly relevant to certain refusal to bargain allegations (complaint pars. 8 & 11) which were settled and severed, along with Case 17–CA–17269, the first day of the hearing. (1:87–88.) The contract contains a union-security clause which requires employees, as a condition of employment, to become and remain ''members in good standing.'' (GCX 2, art. 3.1.) A February 11, 1994 addendum to the contract reads:

> Pursuant to *Paramax Systems Corp*., 311 NLRB [1031], the following language shall be included to ARTICLE 3 UNION SECURITY AND CHECK OFF, Section 1: (added to present clause)
>
> > ''Membership in good standing'' as used herein means offering to pay the dues and fees uniformly required of union members.

The pleadings also establish, and I find, that the Board has both statutory and discretionary jurisdiction, and that the CIU is a statutory labor organization. At trial the parties stipulated, and I find, that UFCW Local 322 is a labor organization within the meaning of Section 2(5) of the Act. (1:94–95.)

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent Ramey, and Respondent CIU, I make these findings and conclusions.

[1] All dates are for 1994 unless otherwise indicated.

[2] References to the six-volume transcript of testimony are by volume and page. Exhibits are designated GCX for the General Counsel's, RX for those of Respondent Ramey, and RXU for those of Respondent CIU. Charging Party Local 322 did not offer any exhibits.

FINDINGS OF FACT

A. *Procedural Matters*

1. Motions to disqualify denied

At various points in the record Ramey or the Congress of Independent Unions, or both, moved that I disqualify myself for rulings allegedly prejudicial to them and because the rulings allegedly reflected bias and prejudice against their clients. The alleged bias was not asserted to be personal, or subjective, but inherent by the nature of my rulings on evidence and procedure. As I noted, the attorneys for the two Respondents and I have differing views about certain procedural matters. (3:822–824.)

There is no evidence here that I demonstrated a ''personal bias or disqualification,'' the grounds for disqualification set forth at 29 CFR§ 102.37. *Control Services*, 315 NLRB 431 (1994); *Teamsters Local 722 (Kasper Trucking)*, 314 NLRB 1016 (1994). Although the applicable statutes governing the Federal judiciary may state a somewhat different test from the Board's regulation, the Board is likely to be strongly influenced by the recent decision of the Supreme Court in *Liteky v. U.S.*, 114 S.Ct. 1147 (1994). Toward the end of the majority opinion the *Liteky* Court states, 114 S.Ct. at 1157:

> First, judicial rulings alone almost never constitute [a] valid basis for a bias or partiality motion. . . . Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.

I reaffirm my rulings denying the motions that I disqualify myself.

2. The General Counsel's special appeal granted

On the morning of Monday, October 31, the fourth day of trial (and following a month-long adjournment), the General Counsel sought to add the name of Trevor Williams to the list of managers named in complaint paragraph 5(f) as maintaining and enforcing a policy requiring employees to execute CIU membership cards in order to continue working for Ramey in order to receive their paychecks. (4:1150–1151.) Ramey objected that the addition of the Williams name would violate the limitations provision of Section 10(b) and would be prejudicial to Ramey. As the General Counsel would need to offer evidence respecting the supervisory or agency status of Williams, as well as the supporting evidence for the allegation, and on the basis of time and budgetary restraints, I denied the General Counsel's motion. The General Counsel announced that the Government would file a special appeal with the Board. (4:1166–1168.) By order dated November 2 the Board, granting the General Counsel's request for special permission to appeal, reversed my ruling. (6:1833, 1963.) Thereafter, the General Counsel called Wade Robert Jager respecting this matter, and Ramey called Trevor Williams in rebuttal.

B. *The Company*

Within a 250-mile radius of its Springfield, Missouri headquarters, Ramey operates 32 supermarket stores, with all but one being in Missouri, the one exception being in Kansas. (3:959; 5:1676; 6:1813.) The only store of Ramey's involved in this proceeding is the one at Aurora, Missouri. A town of about 6500 residents, Aurora lies about 32 miles southwest of Springfield, Missouri. (5:1607–1608.)

Ramey's corporate office is located at Springfield, Missouri. Richard L. Taylor (Taylor) is Ramey's chairman, and his son, Eric, is president and CEO. (3:959; 5:1671–1673.) Taylor performs the duties of a personnel director, and he also handles labor relations. (5:1673–1674.) Tom Gordon is Ramey's controller. (3:972; 5:1566.) Ramey has one store in Aurora. (5:1690.) On November 3, 1993, Ramey relocated its Aurora operation to a larger facility in Aurora and hired additional personnel. (3:841; 5:1449.) The number of personnel in the bargaining unit is not specified in the record, but the total number of store employees, including management, during the period of November 1993 to February 1994 apparently fluctuated from around 65 employees to about 85 employees. (5:1490, 1498; GCXs 15–28.) That approximation includes the meat department employees who are covered by a separate collective-bargaining agreement between Ramey and UFCW Local 340. (5:1569.) Since about 1975 UFCW Local 340 has represented the meat department employees in 8 to 10 of Ramey's stores. (6:1845.)

For several years Terry R. Bagby has been the store manager at Aurora. (5:1447, 1564.) Assisting Bagby is Mark Rinker, the comanager, or ''Second Manager,'' who has held that position since about early January 1994. Before that, Rinker was the ''Third Manager'' assistant manager (5:1663–1664) and Bob Hudson was the comanager (5:1459, 1475, 1663.) Around the time the new store opened in Aurora, Trevor Williams was an assistant manager, holding the position of ''Third Manager.'' Williams remains employed at Ramey, apparently in the same position. (5:1712; 6:1986–1987, 1991.) Shortly after Bob Hudson transferred to New Madrid in late December 1993, Michael Beall was promoted from night stock manager to an assistant manager, in the position of ''Fourth Manager.'' (1:105; 5:1459, 1712.) Beall left Ramey's employment about the third week of February 1994. Promoted from the bargaining unit, Toni Andrus served as a ''Front-End Manager'' at the new Aurora store from its November 1993 opening until she left Ramey's employment about mid-March 1994. (5:1488; 6:1741–1742.) At trial the parties stipulated to the titles and Section 2(11) supervisory status of Taylor, Bagby, and Rinker (1:66–70), but Ramey denies supervisory and agency status respecting Williams, Beall, or Andrus.

C. *Andrus, Beall, and Williams—Statutory Agents*

Although the Government vigorously argues that Toni Andrus, Michael Beall, and Trevor Williams are statutory supervisors, the General Counsel asserts (4:1163 respecting

Williams; Br. at 21) that agency status alone is sufficient to support the requested unfair labor practice findings. Agreeing with the General Counsel's assessment that agency alone is sufficient here, I need not reach the issue of supervisory status.

The record evidence amply supports a finding, which I make, that at all relevant times as to each of them, Toni Andrus, Michael Beall, and Trevor Williams were statutory agents of Ramey. In large measure, the testimony of Store Manager Bagby supports this finding of agency. As the record reflects, Andrus, Beall, and Williams were listed as managers, introduced as such to the employees, wore badges identifying them as assistant managers (''Front-End Manager'' as to Andrus), assigned work to employees, directed employees in their work, had authority to issue oral warnings and to write up employees (although Bagby testified that writeups were merely reports until he investigated and decided, the point is that employees could well see that any such report by an assistant manager would initiate a process that could result in discipline), held keys to the cash registers and to the office, and had access to the office area (nonsupervisory employees, other than the bookkeeper, do not have keys and are not authorized access to the office.)

As Store Manager Bagby phrases it, on those nights when Beall was the only management representative present, ''he was running the place.'' (5:1487.) Although Chairman Taylor describes Beall's authority at such times as merely implementing instructions left by Bagby (5:1732), it is clear that, at the very least, Ramey had invested Andrus, Beall, and Williams with both actual and apparent authority to implement management's orders. Based on all the record evidence, I find that, during the time relevant as to each, Toni Andrus, Michael Beall, and Trevor Williams were agents of Ramey within the meaning of Section 2(13) of the Act and that employees would reasonably believe that each spoke for management respecting the conduct alleged. *Great American Products*, 312 NLRB 962, 963 (1993).

D. *Overview*

The events giving rise to the 8(a)(2) and 8(b)(1)(A) allegations occurred during the period of November–December 1993 when new employees were being hired at the new location of Ramey's Aurora store. For example, Charging Party Marcella Marsha S. Webber worked as a checker for Ramey from November 1, 1993, to April 4, 1994. She started at the old store in Aurora, and about 2 days later she switched to the new store when it opened. (3:1096–1097; 4:1198; RUX 8.) As I describe in a moment, Webber testified that a day or two after her (Webber's) arrival at the new store, Janet Browning, the CIU's steward, told Webber that she had to sign a CIU membership card in order to receive a paycheck. Browning denies.

In early January the CIU's national secretary-treasurer, John A. Flach, met with about 20 employees in the back of Ramey's Aurora store. Webber attended and asked questions. As to some of Webber's questions, Flach referred Webber to R. Richard Davis, the CIU's president. By letter (RUX 5) dated January 17, Webber requested that Davis supply her with certain information about her dues, and she asked for a copy of the CIU's financial statement. Admittedly one of her remarks about union benefits is a bit sarcastic, and one statement (about ''wildly'' protesting having to sign union cards) is an exaggeration. Toward the end of her letter Webber states her then belief that unions ''have outlived their usefulness,'' conceding that such is her ''personal bias.''

In his response of January 24 (GCX 11; RUX 6), Davis advises Webber that he will give her request the ''appropriate consideration and provide you with the information I feel is necessary when it is available.'' Then, extending the sarcasm already present in both letters, Davis concludes by stating, ''Over time I have been subjected to many opinions which I determined to be worthless, yours is merely another. Thank you for your inquiry.'' Several weeks later, on March 4, Davis wrote (RUX 7) Webber to explain that, as a member of the Union, Webber was ''responsible for paying the total dues amount each month.'' Expressing uncertainty as to Webber's desires about her membership, Davis deferred to her future expression on the matter. Webber did not respond, and she left Ramey a month later.

In late January Elizabeth Brewster contacted UFCW Local 322, with Local 322's Glen Conyers returning the call about February 1. Over the next 2 weeks or so Conyers met twice with Brewster and Webber. In conjunction with his meeting with Brewster and Webber, Conyers sent two campaign letters (RXs 5, 6) in early to mid-February to about 40 to 45 employees of Ramey. Conyers testified that he held no campaign meetings with employees because the expression of interest was insufficient. (2:719.) In his first letter (RX 5), dated February 8, Conyers begins by writing he has learned that many employees are unhappy with their representation, or lack thereof, by the CIU. After another paragraph he concludes by suggesting that employees sign and return the enclosed card authorizing Local 322 to represent them.

When Front-End Manager Kim Crume gave Store Manager Bagby a copy of Conyers' February 8 letter (1:143; RX 5), Bagby faxed a copy to Chairman Taylor who came to the Aurora store and spoke with small groups of employees on Thursday, February 10. (5:1594, 1641–1642, 1681; 6:1812.) Before leaving for Aurora, Taylor called his attorney who accompanied Taylor to Aurora. (Although in the store, the attorney, counsel Jones of this case, did not attend any of the small group meetings.) During the trip to Aurora, or at lunch, the attorney wrote some notes (RX 25). The notes, scribbled (a few are almost indecipherable) on a single sheet of notebook paper, are a list of topics to cover. They are not a list of remarks for Taylor to say, and, other than an opening topic that he is not there to threaten or coerce, they are not a list of statements for Taylor to avoid making. The allegations of 8(a)(1) statements are based on Taylor's remarks to employees that February 10 and the alleged followup by supervision. Toward the end of February, Attorney Jones went to the Aurora store and conducted tape-recorded interviews of employees as part of Ramey's investigation of the charges which had been filed against Ramey with Region 17.

Following the initial letters from Conyers, the initial visit by Taylor, and the two charges against Ramey, Taylor sent a three-page letter, dated February 25 (GCX 6), to the Aurora employees and caused a two-page February 25 memo (GCX 5) to be posted on the bulletin board at Aurora. The bulletin board memo expresses the stated purpose of refuting allegations raised by the unfair labor practice charges, whereas the letter (GCX 6) addresses three questions raised during the organizing campaign.

On February 10 Webber filed a charge in Case 17–CA–17204 alleging that Ramey had violated the Act by improperly recognizing the CIU. (RX 10.) By letter dated May 26 (RX 22), Region 17 dismissed Webber's charge. Webber's June 7 appeal (RUX 9) was denied by the General Counsel's Office of Appeals on July 22. (RX 22 at 3.) In the meantime, as we know, on February 16 Local 322 filed the instant charge in Case 17–CA–172042 against Ramey, and on March 17 Webber filed the charge in Case 17–CB–4545 against the CIU. At trial Webber denied that her employment at Ramey was merely a cover to hide her real purpose of serving as an organizing agent on behalf of Local 322.

E. *The November 1993 Violations*

1. Allegations

A cluster of three allegations focuses on events principally in November–December 1993. Complaint paragraph 6 alleges that about November 1 the CIU, ''acting through its agent Janet Browning, at Respondent Ramey's facility (in Aurora), informed employees that they could not be paid by Respondent Ramey unless they signed membership cards on behalf of the CIU.'' Respondent CIU denies. The conduct is alleged to violate Section 8(b)(1)(A) of the Act.

Complaint paragraph 5(e) alleges that, about early December 1993, Respondent Ramey, acting through Front-End Manager Toni Andrus, ''informed employees that they could not receive paychecks or continue to work for Respondent Ramey unless they executed membership cards seeking membership in the CIU.'' Ramey denies. The conduct is alleged to violate Section 8(a)(1) of the Act.

As I mentioned earlier, by trial amendment granted over Ramey's limitations objection (1:57–64), the General Counsel alleges (complaint par. 5(f)) that, since August 16, 1993, Ramey, by Controller Tom Gordon, Aurora Store Manager Terry Bagby, and other members of management, has ''maintained and enforced a policy requiring that employees [at the Aurora, Missouri store] execute membership cards seeking membership in the CIU in order to continue working for Respondent Ramey and in order to receive paychecks.'' Ramey denies. By such action Ramey allegedly violated Section 8(a)(1) and (2) of the Act.

Respecting the 10(b) limitations objection, the original charge in Case 17–CA–17204–2, filed February 16, makes no 8(a)(2) allegation. The amended charge (GCX 1j), filed and served on June 3, does so, and includes the allegation (reflected in complaint par. 5(e)) that Ramey has informed employees ''that they cannot be paid or continue to work unless they execute a membership card seeking membership in the Congress of Independent Unions.'' Ramey argues that the trial amendment, complaint paragraph 5(f), is not sufficiently related to the amended charge so as to support complaint paragraph 5(f). Disagreeing, the General Counsel contends that the trial amendment is sufficiently related. I find that it is sufficiently related to the amended charge, but not to the original charge, and that the limitations period (dated from the amended charge) reaches back 6 months from June 3, 1994, to December 3, 1993.

2. The CIU Janet Browning, CIU steward

a. *Introduction*

Browning, a longtime Ramey employee now working only part-time and no longer the CIU steward, concedes that it was her responsibility as the CIU steward to speak to new employees about CIU membership. (6:1909, 1937.) In so doing, Browning understood that, as steward, store employees were supposed to sign CIU membership cards. (6:1939.) She also would explain to the new employees that the collective-bargaining agreement contained a union-security clause. (6:1940.) According to Browning (and I do not credit her assertion), she did not have employees ''join'' the CIU until after they had been employed for 31 days. (6:1933.) Although, as to the latter, Browning could have meant that she may have presented cards earlier, and that the memberships were not made effective until after the employees had been employed for more than 31 days, I interpret her answer to be that she did not ask employees to sign CIU membership application cards until the employees had been employed for more than 31 days. In the incidents which follow, I credit the General Counsel's witnesses as to disputed matters.

b. *Marcella Webber*

Marcella Marsha Webber worked as a checker at the Aurora store from November 1, 1993, to about April 4, 1994. Three days after she began working, Webber was approached by Janet Browning. The CIU steward handed Webber a CIU membership application card (GCX 12) which Webber reluctantly signed after Browning told Webber that she had to sign it in order to get paid. No CIU representative ever told Webber about any alternatives to full membership in the CIU. The membership card (GCX 12) is dated ''11/4/93.'' Although Browning denies telling Webber that she had to join the CIU in order to get her paychecks, she acknowledges that Webber said she did not like unions. Although conceding that Webber returned the (signed) membership card to her the same day (6:1911), on cross-examination Browning asserts that she never approached an employee about signing membership cards until after the employee's 31st day, and that perhaps Webber had placed the wrong date on the card. Webber also identified her printing on a dues-deduction authorization card (GCX 13), also dated November 4, 1993, but she does not remember the card.

c. *Carla Renee Lawson*

Carla Renee Lawson was hired about 2 weeks before the new store opened the first of November 1993. She ordered and stocked prepackaged bread. Lawson left Ramey in late February. (3:978–979.) Browning told Lawson that she had to sign a union membership card. No express condition was made to Lawson's paycheck or to her employment. Although Lawson recalls the conversation occurring about 30 days after she was hired, the membership card (GCX 9) and dues-deduction authorization (GCX 10) which she signed are dated November 8, 1993. Lawson testified that she signed because she was told she had to do so. No explanation was made to her about the difference between full membership and the payment of dues and fees.

Although Browning did not expressly link the requirement of having to sign a union card to receiving a paycheck, I find that condition implicit in Browning's statement, particularly since Browning gave no explanation about Lawson's right to pay only dues and fees.

d. *Wade Robert Jager*

Hired on Thursday, October 28, 1993, Wade Robert Jager worked as a sacker. About a week after Jager was hired, CIU Steward Janet Browning approached Jager at the front of the store and, handing him two blank CIU cards, told him that he needed to fill them out or his paycheck (he had not yet received his first paycheck) could be held back. Neither Browning nor any CIU representative ever explained any alternative to full union membership. Some 2 to 3 days later Jager signed the cards and returned them to Browning. (4:1315–1318, 1339, 1397, 1401, 1407, 1427–1431.) Browning does not recall any such conversation with Jager. (6:1949.) However, she generally denies the concept. (6:1920–1921.)

Jager identified two blank cards as the type which Browning gave him and which he signed. These are in evidence as General Counsel's Exhbit 7, bearing a boldprint heading, all capitals, ''Authorization/Application for Membership,'' first line, and second line, ''Congress Of Independent Unions.'' The second card, Respondent Union's Exhibit 1, bears the boldprint heading of ''Authorization For Deduction.'' The cards are white with black print. Neither the originals of these two signed cards, nor copies, were produced, identified, or offered in evidence.

Some initial confusion was produced about the cards because Jager, on cross-examination, identified a second membership card as bearing his signature and as being a card which he signed on January 18, 1994. Most of the confusion was generated because Jager understood an earlier question by the General Counsel to ask if he had ever signed any union cards different from the two (and particularly the membership card) which he had signed in early November 1993. Jager later explained his misunderstanding of the question (he understood the question as asking whether he had signed a different type card, not the same type a second time), and further explained that in January Browning had brought the second card (RX 21) to him saying that he needed to re-sign because the first card had been misplaced. Thus, Jager re-signed the same type card, not a different type card.

e. *Anthony L. Moore*

Anthony L. Moore was employed for Ramey from November 7, 1993, to June 23, 1994. When Moore went to the service desk to pick up his first paycheck, Janet Browning, who was there, told him that he had to sign the two union cards (which Moore observed were paperclipped to his paycheck) in order to get his check. One card was a membership card and the other a dues-deduction authorization. A copy of the membership card (in evidence as GCX 8) reflects a signing date of November 23, 1993. Although Moore thought he actually had signed the card a few days earlier, that fact is immaterial, for it is not unusual for memories as to dates to be imperfect. Moreover, although this incident occurred within the 30-day grace period allowed new employees by the statute, even after the 30 days a union has the responsibility to explain to new employees that they do not have to join the union and may pay only dues and fees.

f. *Others*

Michael Beall was hired as a sacker during the summer of 1993. He left about February 21. When the new store was opened on November 1, Beall was promoted to night stock manager, and later to assistant store manager (fourth manager). One day after November (Beall's time estimates range from after November to mid-February) Beall handed Jessica Dixon her paycheck. Attached to the paycheck was a union card. Turning then to operate a cash register, Beall heard Dixon call Janet Browning over and ask Browning what the card was. Browning replied that it was a union card which Dixon needed to sign and return if she wanted to keep getting paid. The record does not reflect whether Dixon, who took her check and the CIU card, ever signed the card. At the time Dixon had been employed more than 30 days. I consider the evidence as corroboration that Browning was engaging in such conduct.

Judy Harris, a checker who has worked for Ramey some 21 years, trains new employees. Harris identified a CIU membership application (GCX 7) as the type card which she heard Janet Browning tell seven to nine new employees during the first 2 weeks of November 1993 that it was ''important'' that they sign and return the cards. Similarly, in February Harris heard Browning tell a new employee that the employee ''had'' to sign such a card and return the next day.

g. *Conclusion*

After an extensive review of the law, both statutory and case, the Board, in *Electrical Workers IUE Local 444 (Paramax Systems)*, 311 NLRB at 1041 (1993), explained that employees must be informed of the actual extent of their obligation under a union-security clause. A union-security clause impairs Section 7 rights, the Board there wrote. Thus, 311 NLRB at 1041:

> As we have seen, such impairment is permissible, provided that the impairment is narrowly confined to the obligation to pay dues and fees. In our view, where a union is given the privilege of impairing Section 7 rights to a limited extent, the union has the concomitant obligation to explain the precise limits of that impairment.

As the Board noted in *Paramax*, 311 NLRB at 1037 fn. 30 and 1040 fn. 56, that case did not present the issue of whether a union (which enjoys a contract containing a union-security clause) additionally is required to notify unit employees of their options under *Communications Workers v. Beck*, 487 U.S. 735 (1988) (nonmember employees may reduce the required dues and fees to their proportional share of the money spent by the union on representational activities). Similarly, there is no allegation in our case that the CIU violated the law by failing to explain to unit employees their rights under *Beck*.

When a union agent tells an employee, in a unit covered by a contract with a union-security clause, that the employee must sign a union membership card to retain his job, the union violates Section 8(b)(1)(A) of the Act. *Communication*

Workers Local 1101 (New York Telephone), 281 NLRB 413 fn. 1 (1986).

Based on the foregoing findings of incidents in November 1993, I find that the CIU violated Section 8(b)(1)(A) of the Act when its then shop steward, Janet Browning, told employees, either expressly or by implication, that they had to sign CIU membership cards in order to get their paychecks at Ramey Supermarkets.

3. The Company

a. *Introduction*

As described by Michael Beall, at Ramey's old store in Aurora, Ramey had posted in the office, near the desk of Store Manager Bagby, a July 30, 1991 memo by Tom Gordon addressed to ''All Store Managers'' on the subject of ''Union Cards New Procedure For Payroll.'' Gordon is stipulated to be Ramey's controller (1:64, 67, 70), and Chairman Taylor describes Gordon as the Company's controller and chief accounting officer and the person who supervises financial accounts and affairs for the corporate entity encompassing Ramey's stores. (3:972.) Gordon did not testify. The memo, copy identified by Beall, provides (GCX 4):

> We are having a problem that has been growing and has now become more than a problem. To correct this and to prevent any future problems, we are changing our procedure on union cards. Union cards will now come stapled to an employee's payroll check. The manager is not to release the payroll check until the union card is signed and handed (literally) back to the manager. If an employee refuses to sign and return the union card, managers are to call Tom Gordon immediately for further instructions.
>
> These union cards must be returned with the new week's payroll report and schedule and must come to the office on a timely basis. These cards are to come in with the next payroll sent to the office unless the payroll check has not been received by the employee whenever payroll is sent in. THERE IS TO BE NO EXCEPTION! NO PAYROLL CHECK WILL BE RELEASED UNLESS UNION CARD IS RETURNED. MANAGERS WILL BE HELD RESPONSIBLE FOR FOLLOWING THROUGH ON THIS PROCEDURE!

Beall also saw an updated version taped to the office window at the new store, but he only glanced at it and could not describe it more than that it was a ''newer version.'' (1:203, 208.) No copy of the ''newer version'' is in evidence. Of course, the newer version may well have been different in important respects. I therefore do not speculate on the contents of the posted ''newer version'' in the new store to determine Ramey's policy. Chairman Taylor identified an undated memo (RX 24) from him to all managers on the topic of instructions on ''checkoff authorization cards.'' Taylor testified that this new memo was developed during the month following the September 29, 1994 adjournment of the hearing and sent to all managers. (5:1675, 1677; 6:1843–1844.) That is, it was developed between the fourth and fifth days of the trial of this case. Taylor testified that the new instructions were sent to the managers so that ''if we did have something out there illegal,'' this would give the stores a legal document ''to work off of.'' (5:1677; 6:1839–1842.) Because of the findings I make, I need not describe these new instructions further.

As I have found that, because of limitations, the 8(a)(2) allegation reaches back only to December 3, 1993, I shall find no 8(a)(2) violation for maintenance and enforcement of the policy before December 3, 1993. Similarly, the 8(a)(1) portion of complaint paragraphs 5(e) and (f) allegations rest, I find, on the June 3, 1994 amendment to the charge in Case 17–CA–17204–2. Thus, I find merit to the limitations defense as to them. The allegation of threats of no paychecks or loss of jobs unless a CIU membership application was executed injected reference to a new party, the CIU, whereas previously the charge had focused on Ramey and UFCW Local 322. Thus, as the amendment injected matter not sufficiently related to the existing charge, the amended charge must stand on its own against the defense of 10(b) limitations. Accordingly, I shall dismiss those paragraphs respecting any matters occurring before December 3, 1993.

The one 1993 incident under complaint paragraph 5(f), the trial amendment, pertains to Trevor Williams. Recall that the Williams incident was added by virtue of the General Counsel's special appeal and Ramey's objections included limitations (at least as to the 8(a)(2) allegation). Gordon's July 1991 memo is background for the December allegation respecting Front-End Manager Toni Andrus. Respecting the incidents involving Andrus and Williams, I credit the General Counsel's witnesses on disputed matters.

b. *Toni Andrus, front-end manager*

Elizabeth Brewster began work for Ramey on October 28, 1993 (2:386); signed a CIU membership application card (RX 7) on November 19, 1993 (plus a dues-deduction authorization on the same date, RX 11); and (2:386, 485) left Ramey about March 28. Brewster worked as a cashier at the front end of the Aurora store (having trained 2 days at the old store before transferring to the new store). On the occasion Brewster received her second paycheck, from Front-End Manager Toni Andrus, the CIU membership application (RX 7) was attached to the paycheck. Brewster asked Andrus what the card was, and Andrus replied that it is a card to join the CIU. ''What do you mean?'' Brewster asked. Andrus answered, ''You have to join this union before you can get your paycheck.'' When Brewster asked what would happen if she did not sign, Andrus told her, ''You will not work for Ramey's.'' Brewster signed on the spot.

When shown, on cross-examination by Ramey, the addendum to the collective-bargaining agreement, Brewster testified that she did not recall ever seeing the document and the statement there about good-standing and dues, that no one has ever explained the language to her about ''membership in good standing'' ''means offering to pay the dues and fees uniformly required of union members,'' and that no one has ever explained to her the case of *Paramax Systems Corp*., supra.

Testifying that she occasionally distributed paychecks while at Ramey, Andrus does not remember an occasion of giving Brewster her paycheck, although she concedes she could have done so and could have conversed with Brewster at the time. Andrus asserts that she never discussed union membership when distributing paychecks. According to Andrus (6:1803), she never discussed the CIU (Union) with Brewster.

Brewster testified persuasively, but Andrus did not. I believe Brewster, and I do not believe Andrus. Ordinarily I would find that Ramey, by the November 19 statements by Front-End Manager Toni Andrus to checker (or cashier) Elizabeth Brewster, a new employee, violated Section 8(a)(1) of the Act. As Brewster had been employed less than 30 days as of November 19, she had no obligation to sign anything for the CIU, and the statements by Andrus were therefore coercive. Because, however, the statements by Andrus predated December 3, 1933, I shall dismiss complaint paragraphs 5(e) and, as to Andrus, 5(f), as being time-barred.

c. *Trevor Williams, assistant manager*

Earlier I described the General Counsel's special appeal, which the Board granted. That added the name of Trevor Williams to the names of managers in complaint paragraph 5(f). The timeframe specified by the General Counsel was November 1993. (4:1159.) The General Counsel's offer of proof named **Robert Wade Jager** as the supporting witness and specified the date as being within 2 weeks of Jager's October 28, 1993 (4:1305) hire date. (4:1320–1321.) About Friday, November 5, 1993, Jager testified,[3] Jager approached Assistant Manager Trevor Williams at the service desk and asked Williams whether he knew why he had to sign [union cards] before he could get his paycheck. Williams replied that he did not know the reason, but that was ''just how it was done.'' Williams added that Jager needed to sign his card and ''get that in'' as soon as possible so Jager could receive his first paycheck. (6:1966, 1969, 1974.) Williams either does not recall or denies. (6:1987–1988, 1992.) No one from management ever explained to Jager any alternative to full union membership, and he did not ask about any. (6:1970, 1979.) Jager acknowledges that he received all his paychecks. (4:1407.)

Because the Williams/Jager incident occurred before December 3, 1993, the fact that I credit Jager is immaterial. I shall dismiss complaint paragraph 5(f) as to Trevor Williams because, I find, the incident is time-barred. As there is no other evidence supporting paragraph 5(f), I now shall dismiss complaint paragraph 5(f) in its entirety.

F. *The February 1994 Allegations*

1. Introduction

When Chairman Taylor went to the Aurora store on February 10 and spoke with small groups of employees (with as few as one employee at a time), his comments led to the February 16 charge by Local 322 and to two complaint allegations alleging 8(a)(1) violations. Complaint paragraph 5(a) alleges that Ramey, through Taylor, threatened employees with store closure or the loss of benefits if employees supported or attempted to select Local 322 as their bargaining representative. Paragraph 5(b) alleges that Ramey, by Taylor, instructed employees to try to convince other employees not to support UFCW Local 322.

Associated with those allegations, complaint paragraph 5(c) alleges that Ramey, by Assistant Manager Michael Beall and Comanager Mark Rinker, about mid-February, interrogated employees about their support for or activities on behalf of Local 322.

Complaint paragraph 5(d) alleges that Ramey, by Store Manager Terry Bagby about February 9 or 10, impliedly promised employees increased benefits in order to dissuade them from supporting or engaging in activities on behalf of Local 322.

Based primarily on my credibility resolutions, I dismiss complaint paragraph 5(a) and find merit to paragraphs 5(c) and (d). I dismiss 5(b) because, with the dismissal of 5(a), the request by Taylor that an employee persuade other employees to forget about Local 322 is left unconnected to any economic threat and therefore is not coercive.

2. Richard Taylor, chairman

When Taylor spoke with employees at the Aurora store on February 10, Store Manager Bagby was present at the conversations. There is no evidence that anyone, including Taylor or Bagby, taperecorded Taylor's remarks to or conversations with any of the small groups. Neither Taylor nor Bagby made a list of the employees Taylor spoke to, and no witness estimates the number. Bagby (5:1597) and Taylor (6:1829) assert that Taylor spoke with most who were at work that day. As the payroll report reflects for the previous week, ending February 5 (GCX 28), the work force appears to have numbered about 65 employees, not counting managers and meat department employees. As the payroll reports reflect, not all employees work on the same days, or on Thursdays, and some work only 4 or 5 hours a day. While it would be speculation for me to find a set number of employees that Taylor addressed, it surely is safe to say that the number was at least 20, and probably closer to 30 or 35. (At one point, 5:1597, the General Counsel seems to suggest a number of 20, but that is not certain.)

From this number of 20 or more employees, the General Counsel produced only two witnesses who heard Taylor: **Carla Renee Lawson** and **Wade Robert Jager**. Their testimony about Taylor's comments leaves me unpersuaded that Taylor made the threats alleged. Moreover, I note that Elizabeth Brewster, a prominent witness for the General Counsel, testified that she heard no threats. (2:551.) Standing alone, Brewster's conclusory testimony is of little value. In light of the balance of the record, I consider it some support for the findings I make.

Wade Robert Jager testified that Taylor, in the presence of Bagby, spoke for some 20 to 30 minutes to him and sacker Mike Forester in the warehouse area of the store. (4:1342.) Taylor first asked about any problems, and after some discussion about holidays and other matters by the group, Taylor turned to the topic of the ''new union'' trying to get into the store. Taylor said that he had seen (Local 322) in operation before, that employees would not get the benefits the union promised, and that companies who had dealt with Local 322 had either gone out of business or gotten another union because Local 322 was not a good union. After a few more words Taylor stated, ''And if this becomes a problem, there will be no problem about shutting down the store until

[3] Jager does not specify the date, but at various points approximates the date based on his October 28, 1993 (a Thursday) hire date and as also being a day or two after Janet Browning gave him two CIU cards about a week after he was hired. The actual date of Jager's conversation with Williams could have been in the following week of November 8–12. Nevertheless, Jager's estimated timeframe appears very close given the lapse of time between then and his testimony about a year later.

this problem is resolved.'' According to Jager (although still employed there, Forester did not testify), Taylor had a serious look when he said this, he did not hesitate, and Taylor looked directly at Jager and Forester when he said it. (4:1343–1346.) Jager was not questioned during the precomplaint investigation, for he gave no pretrial affidavit (4:1346, 1356) and he first spoke to the General Counsel only a few days before Jager testified, receiving a subpoena only the night before. (4:1304, 1356, 1375.)

Although Jager's status as an eleventh-hour witness does not leave his story suspect, what renders his trial testimony unreliable is the fact that when he gave a taped interview to attorney Jones on February 28 (6:1854, 1960, 2011), Jager told Jones that Taylor had begun by saying he was not making any threats. Taylor then described the past history between himself and the new union. Then (RX 33 at 3–4):

> MR. JONES: Did he, uh, did Mr. Taylor made any threats to close the store if they got in here? Anything like that?
>
> MR. JAGER: Not to me.
>
> . . . .
>
> MR. JONES: You and Todd Secora? O.K. You said—he did or didn't?
>
> MR. JAGER: He did not.
>
> MR. JONES: O.K. O.K. Did the, did the store closing even come up in that meeting, that you recall?
>
> MR. JAGER: No.
>
> MR. JONES: O.K. O.K. So, has—has any management made any threats to you or, or asked you questions about how you stand on that matter?
>
> MR. JAGER: No.

At the trial Jager did not contend that, in order to protect his job, he lied to Attorney Jones by denying that Taylor had made threat a to close, by denying that the topic of store closing had come up, and by denying any threats by any member of management. Accordingly, I find that the taped interview is the accurate version.

In the presence of Bagby, Taylor spoke with *Carla Renee Lawson* in the rear of the store. Just the three were present. *Lawson* concedes that Taylor spoke about Local 322 and the competitor, Consumers Market, that the competitor was having financial difficulty, that Local 322 could send pickets to Ramey's and run off Ramey's customers, drive the business down, and with customers there would be no jobs. Earlier in the conversation Lawson had told Taylor that, in her opinion, the interest in Local 322 had been generated by the CIU's letter (GCX 11) of January 24 to Marcella Webber, a copy of which Lawson had found in the breakroom. Lawson produced the copy for Taylor. After Taylor read it, he said there was ''no call'' for that type letter. (Recall the line, ''Over time I have been subjected to many opinions which I determined to be worthless, yours is merely another.'' GCX 11.) Moments later, after Taylor's remarks about the possible picketing by Local 322 at Ramey, Lawson stated that the whole thing made her sick. Taylor then told her to ''Hang in there'' and try to get the other employees to forget about the new union (3:1002, direct; 3:1070, cross) and (direct examination version only), ''that in the past he had had to close some of the Springfield stores for the same thing and he wouldn't hesitate to do the same to this one.''

This added remark ''scared me,'' Lawson testified, because it meant Ramey's closing of the store and her losing her job. Despite this supposed addition of a threat by Taylor, Lawson admits (3:1066–1067) that Taylor was nice during the conversation and to everyone that day so far as she observed. The denials by Taylor (5:1690, 1696) and Bagby (5:1600) of a closure threat are generalized and not expressly directed to the specific conversation with Lawson. So is Taylor's general denial that he ever instructed anyone to convince other employees not to support Local 322.

I am persuaded that Lawson, who appeared to be a sincere witness, became confused as to what Taylor said and garbled part of his remarks, ending up by tacking the alleged threat onto a ''Hang in there'' statement having no transitional connection with the supposed threat. Finding that Taylor did not make the closure statement, I shall dismiss complaint paragraph 5(a). Finding that Taylor's ''Hang in there'' exhortation that Lawson persuade other employees to forget Local 322 is not a coercive statement under the Act, because it is unconnected to any threat to Lawson's job, I shall dismiss complaint paragraph 5(b).

In making these findings and in dismissing paragraphs 5(a) and (b), I have considered the testimony of former Assistant Manager **Michael Beall**. Recall that Beall left Ramey about February 21. Beall testified that, about 11 p.m. in the store's parking lot as Taylor was leaving after having the meetings with employees, Beall asked Store Manager Bagby what the meetings had been about. Bagby told Beall that the meetings concerned the new union (Local 322), that Taylor had said he would close down the store or cut hours and make conditions so that employees would not want to work there if they let in the new union. As to the cutting of hours, Beall recalls (1:149) that ''Terry gave a rough estimate of about 10 hours.'' When Beall asked Bagby whether he thought Taylor would do these things, Bagby replied that he had done it before. (1:151.) Although conceding that possibly Bagby had made other remarks, Beall, on cross-examination, states that Bagby said nothing about Taylor talking to the employees about Consumers Market. Some 2 to 3 weeks before Beall left Ramey on February 21, he told Bagby that he was looking for another job. Yet for the parking lot conversation he remembers the part which he attributes to Bagby ''because they struck me that I might lose my job anyway.'' (1:340–341.) In his pretrial affidavit, Beall states that before Taylor arrived that day, Bagby alerted him that Taylor was coming to tell the employees ''what he was going to do if they decided to go union.'' (1:276.)

Bagby asserts that Taylor never told employees in the meetings that he would close the store (5:1600), but Bagby never addresses the parking lot conversation with Beall and never specifically denies making the remarks attributed to him by Beall.

Beall appeared to be a sincere witness, and I generally credit him. However, I find that Bagby's remarks to Beall in the parking lot fall short of reporting what Taylor said to the employees. As mentioned, even before Taylor arrived, Bagby told Beall that Taylor was coming to tell the employees what he was going to do if the employees brought in Local 322. Even assuming that Taylor privately told Bagby of this, and at some point told Bagby he would close the store if Local 322 got in, that falls short of establishing that Taylor in fact said that to the employees. Even though Bagby's remarks in

the parking lot include those attributed to him by Beall, I find that they were an expression of Bagby's understanding of what Taylor had privately told Bagby what he would do, not what Taylor actually said to the employees. As stated above, I shall dismiss complaint paragraphs 5(a) and (b).

3. Michael Beall, assistant manager; Mark Rinker, comanager

Beall testified that early the next morning at work he asked Bagby whether Bagby really thought that Taylor would close the store. Bagby said he thought Taylor would do so. Bagby then asked Beall to talk with the employees and, while Beall should appear to be unconcerned, to ask the employees who had started the union activity, where the employees stood on the matter, whether and how they would vote, and to report back to him. To Beall's question of what Bagby would do if he learned who had started it, Bagby replied that he would make it really hard for them to work there. (1:151–153, 170, 260.)

Over the next few days Beall interrogated about 20 employees on where they stood and how they would vote and (1:165, 170) reported that information to Bagby. He did not report that he had learned that Marcella Webber and Elizabeth Brewster had started the union activity because they were his friends and he did not want to see them fired. (Of course, by that time Webber had already filed two charges against Ramey.) Elizabeth Brewster testified that she overheard Beall asking Carla Renee Lawson and Cathy Hukill how they felt about the new union coming in. (2:481–482.) Lawson verifies this. (3:1003–1004.) Although Wade Robert Jager asserts that Beall asked him his intentions respecting the new union about 2 weeks after Taylor's visit (4:1347–1348, 1359) (2 weeks later would have been after Beall's February 21 departure), the tape recording which attorney Jones made of his February 28 (6:1854, 1960, 2011) conversation with Jager records Jager as telling Jones that Beall had not talked with him about the new union that was trying to get into the store. (RX 33 at 2.) If Jager thought, on February 28, that he was trying to protect Beall, he did not so testify. I find unreliable Jager's trial testimony that Beall interrogated him. Although Bagby denies asking Beall or Rinker to question employees, and denies that Beall or Rinker ever reported any such information to him, he never denies saying that he would make it hard for the instigators.

Beall also testified that as he was preparing to leave Bagby's office, later in the same day that Beall made his report to Bagby, when Comanager Rinker came in and reported on what a couple of employees (Jeremy Dodd being the only name Beall could recall) had told him respecting where they stood on the new union. (1:171–177.) Rinker denies making such a report or being asked to interrogate and to report. (5:1669.)

Crediting Michael Beall, Elizabeth Brewster, and Carla Renee Lawson, and not believing Store Manager Bagby or Comanager Rinker, I find that, as alleged in complaint paragraph 5(c), in mid-February 1994, Respondent Ramey violated Section 8(a)(1) of the Act when Assistant Manager Michael Beall, Ramey's statutory agent, interrogated employees concerning their activities on behalf of Local 322. Although the evidence about Rinker lends support to Beall's story, it fails to establish that Rinker interrogated anyone. All Beall's testimony shows is that Rinker ''had talked to Jeremy Dodd about where he stood with the union.'' (1:173.) Dodd did not testify, and the record does not show how the conversation began. Dodd could have injected the topic into some unrelated work conversation and Rinker, his ears open, merely conveyed that information to Bagby. Accordingly, while I find merit support for the Michael Beall portion of complaint paragraph 5(c), I shall dismiss paragraph 5(c) as to Mark Rinker.

4. Terry Bagby, store manager

a. *Facts*

When Chairman Taylor spoke to small groups of employees on February 10, checker Judy Harris, a 21-year employee, was ill and not at work. (2:295, 699.) Bagby (who erroneously recalls that Harris had completed her shift that day) testified that Taylor told him he was sorry he had not been able to speak with Harris, and for Bagby to talk with her the following day and tell her why Taylor had come to the store. (5:1603, 1652.) The following morning, Bagby took Harris aside and spoke with her. (2:695; 3:791:5:1603.) Their versions are a bit different. Harris testified more persuasively. Crediting Harris, I find that her version is the correct one, and I accept details of Bagby's version only to the extent they are consistent with the testimony of Harris.

On this occasion Bagby told Harris that Taylor had been at the store the previous day and spoken to the employees about the new union that was trying to get into the store. If the new union succeeded, Bagby said, there would be problems because there would be picketing. That would benefit only Consumers (Ramey's competitor) by running customers away from Ramey and hurting Ramey. Bagby then said he knew some of the older employees were unhappy because there had been no pay raises. Harris spoke up and said she was unhappy because of what had happened to the older employees, that they had not had a raise in 10 to 15 years. (2:696; 3:792–793.)

Bagby replied that he knew they were unhappy and he did not blame them. Bagby told her that if they had any complaints they could go to John Flach (the CIU's national secretary-treasurer) and Flach could talk with Taylor and, while Bagby was not making any promises, if it were within reason, Taylor could ''break'' the contract or consider breaking the contract. (Bagby denies saying ''break'' the contract. 5:1609.) Harris understood Bagby to be saying that the employees could go through John Flach to approach Taylor about getting a general pay increase. (2:698; 3:793, 796.)

b. *Discussion*

What was said, I find, is that, after Bagby spoke about the harm that would come to Ramey's if the new union got in and began picketing, Bagby switched to the subject of some older employees being unhappy over no pay raises. When Harris agreed, Bagby told her that employees with complaints could go to the CIU, that the CIU could go to Taylor (as agreed midterm negotiations) and, while Bagby was making no promises, if the CIU's request for a general pay increase were ''reasonable,'' Taylor would or could consider it (as an agreed midterm modification of the collective-bargaining agreement). In fact, the parties did this, reaching agreement in February (although not clearing for implementation until September) for changes effective April 24. Aside

from some general pay increases for different classifications, Harris was among certain employees receiving an hourly increase of 25 cents as of April 24 and another 25 cents effective February 1, 1995. (RX 3; 3:796– 798.)

Disagreeing with the General Counsel, I do not find Bagby's remarks to be an implied promise of benefits made in order to persuade Harris and other longterm employees to drop their support of Local 322. Instead, Bagby suggested that she take any complaint to the CIU which could approach Taylor about a midterm modification of the collective-bargaining agreement. Taylor could or would consider any ''reasonable'' request by the CIU. Bagby merely directed Harris to the proper party, her bargaining representative, to handle her complaint about pay rates. While Bagby suggested that Taylor would or could ''consider'' any reasonable request from the CIU, such consideration is nothing more than what Taylor could do any day of the year that such a request might be made. After considering such a request, Taylor could grant it or reject it. I shall dismiss complaint paragraph 5(d).

5. Purported mitigation

Although I have dismissed most allegations, I need to consider, in relation to the finding that then Assistant Manager Michael Beall interrogated employees, the two-page February 25, 1994 memo (GCX 5) from Chairman Taylor, addressed to employees, and posted in the breakroom. Taylor begins the memo by assuring employees that there is no basis for the unfair labor practice charges which have been filed against Ramey and its supervisors, and then advising employees in numbered paragraphs summarized here as follows: First, employees are free to support any union without discrimination. Second, Ramey will not threaten to close a store. Third (a long paragraph referring to the midterm modification of the collective-bargaining agreement granting pay raises). Fourth (I quote in a moment). Fifth, Taylor tells employees not to believe the false allegations by (Local 322), the same Union Ramey's employees voted out years ago. The fourth paragraph reads:

> 4. If any of you believe that any store manager is unlawfully interrogating you about your views or opinions for or against a particular organization, you are advised that no supervisor has authority to do so. If any of you believe that any supervisor is threatening you, or your job, because of any protected rights you have, you are hereby advised no supervisor has the right to do so. You are advised to immediately call any such conduct to my attention and to the attention of your current bargaining agent for proper corrective action through the grievance procedure, or through my offices.

Elizabeth Brewster removed the second page (which contains par. 4) and mailed it to Glen Conyers of Local 322 because she thought paragraph 5 would give Conyers a laugh. Although Bagby concedes that he is in the breakroom twice a day, he (apparently not discovering that the second page had been removed) did not replace it until its absence was mentioned during the course of this hearing. Aside from the question of whether the notice was adequately published, any repudiation, to be legally effective, must be specific in nature to the coercive conduct. *Gaines Electric Co.*, 309 NLRB 1077, 1081 (1992). The notice here does not do that. First, it refers to a ''store manager,'' a term employees probably would associate with Bagby rather than an assistant manager like Beall. Second, the reference to ''supervisor'' is more pertinent to labor law than to store terminology. Employees would likely understand the term to mean Bagby's superior, the area manager or area supervisor.

As for Taylor's three-page letter of February 25 (GCX 6) which was mailed to employees, that letter addresses the question of whether Ramey would close the store if the employees joined the new Union. (At one point the letter states that Ramey will not threaten employees with closing of the store.) Accordingly, neither the bulletin board notice (GCX 5) nor the February 25 letter (GCX 6) to employees constitutes a disavowal of Beall's conduct.

CONCLUSIONS OF LAW

1. At all times material, then Assistant Manager Michael Beall functioned as Respondent Ramey's agent within the meaning of Section 2(13) of the Act.

2. Respondent Ramey violated Section 8(a)(1) of the Act when Assistant Manager Michael Beall interrogated employees in mid-February 1994 concerning their sentiments respecting UFCW Local 322.

3. At all times material, Janet Browning, steward for the CIU at Ramey's Aurora, Missouri store, was the CIU's agent within the meaning of Section 2(13) of the Act.

4. Respondent CIU violated Section 8(b)(1)(A) of the Act in November 1993 when its agent Janet Browning informed employees that they could not be paid by Respondent Ramey or hold their jobs there unless they signed membership cards on behalf of the CIU.

5. The limitation period for the trial amendment to the charge in Case 17–CA–17204–2 reaches back to December 3, 1993.

6. The unfair labor practices found affect commerce within the meaning of 29 U.S.C. § 152(6) and (7).

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that each must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

A. The Respondent, Roswil, Inc. d/b/a Ramey Supermarkets, Aurora, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating any employee about union support or union activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its store in Aurora, Missouri, copies of the attached notice marked ''Appendix A.''[5] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent Ramey's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Ramey to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Ramey has taken to comply.

B. The Respondent, Congress of Independent Unions, Alton, Illinois, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Telling employees that they can not be paid by Ramey Supermarkets unless they sign CIU membership cards.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post on its union bulletin board at Ramey's Aurora, Missouri store copies of the attached notice marked ''Appendix B.''[6] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by Respondent CIU's authorized representative, shall be posted by Respondent CIU immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by Respondent CIU to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[6] See fn. 5, above.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

ROSWIL, INC. D/B/A RAMEY SUPERMARKETS

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT tell you that you can not be paid by Ramey Supermarkets unless you sign our membership cards.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

CONGRESS OF INDEPENDENT UNIONS